

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

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In re:	:	Chapter 11 (Subchapter V)
	:	
Marcantonio W. Barnes	:	No. 23-11190-KHK
Debtor.	:	
	:	
-----	X	

MOTION TO RECONSIDER ORDER DISMISSING CASE

Marcantonio W. Barnes, debtor-in-possession (the "Debtor"), and respectfully moves pursuant to Bankr. R. 9023/FRCP 59 for an Order reconsidering, altering and amending the Court's Order dismissing this case.

1. **Background.** Debtor commenced this case under Subchapter V of Chapter 11 on July 25, 2023. Debtor has continued in the possession of his property as debtor-in-possession pursuant to the Bankruptcy Code. Debtor's Plan, which proposed repayment of creditors at 100% was confirmed on May 17, 2024, and a discharge was subsequently entered. Debtor performed his plan until he lost his employment. Debtor's inability to complete his Chapter 11 plan was exclusively attributable to circumstances beyond debtor's control. Debtor was performing under the plan prior to his loss of employment. The Court stated during the hearing on creditor's motion to convert or dismiss that debtor "wants to renege" on his promise to pay under the plan, but the circumstances that led to Debtor's request to convert the case were neither expected nor reasonably within his control. Instead, Debtor's request to convert the case is exclusively a consequence of the Debtor's loss of income due to global political and economic circumstances beyond his control. The loss of income was unintentional and marks a significant change to the underlying basis of the plan, making it impossible to uphold certain aspects of the

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plan. Debtor's request to convert the case to Ch.7 is a remedy that debtor is pursuing as a last resort, only after first exhausting all possible efforts and resources to pay both secured and unsecured creditors 100% of their claims under the plan.

2. **Debtor had a Right to Convert.** Prior to consideration of the Motion to Dismiss or Convert filed by Newtek Small Business Finance, the Debtor made an oral motion to convert the case to Chapter 7. The Court denied that motion because the Debtor was not a debtor in possession, but instead is a post-confirmation debtor. That was error. Section 1182(2) of the Bankruptcy Code provides that "The term 'debtor in possession' means the debtor, unless removed as debtor in possession under section 1185(a) of this title." Debtor was never removed as Debtor in Possession under that section, which itself makes clear that the term applies both before or after confirmation: "On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, *or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.*" (emphasis added). Similarly, Section 1101(1) of the Code (which does not apply in Subchapter V, but is instructive here) provides that "'debtor in possession' means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case." Thus, a Debtor remains a Debtor in Possession after confirmation, for as long as he remains a Debtor,¹ unless those exceptions apply (which they do not here). As stated in *Abbott v. Blackwelder Furniture Co.*, 33 B.R. 399, 401 (W.D.N.C. 1983):

Second, the Plaintiffs maintain that at the time of conversion Blackwelders was not a debtor in possession as defined by the Code, so as to permit conversion. "Debtor in possession" is defined in 11 U.S.C. § 1101(1) as the "debtor except when a person that has qualified under Section 322 of this title is serving as trustee in the case." "Trustee" refers to a "trustee in possession," an operating trustee appointed after the commencement of a Chapter 11 case, but prior to the confirmation of a Reorganization Plan. 11 U.S.C. §

¹ § 101(13): "The term 'debtor' means person or municipality concerning which a case under this title has been commenced."

1104. In the case at bar, conversion occurred after confirmation; no such "trustee in possession" was created. Therefore, by statutory definition, the debtor was a "debtor in possession." 11 U.S.C. § 1101(1).

Congress provided the Chapter 11 debtor with the absolute right to accomplish voluntary conversion to a Chapter 7 liquidation without Court approval. 11 U.S.C. § 1112. *See also*, H.R.Rep. No. 95-595, 95th Congress, 1st Sess. 405 (1977); S.Rep. No. 95-989, 95th Congress, 2d Sess. 117 (1978), U.S. Code Cong. & Admin.News, p. 5787.

As such, the Court should have granted Debtor's Motion to Convert, which would have mooted the creditor's motion to convert or dismiss.

3. **Conversion is in the Best Interests of Creditors and the Estate.** Conversion rather than dismissal would also have best served the interests of the creditors and the estate, the standard for choosing between them under § 1112(b). The Court heard only from secured creditors who wanted to foreclose – but even there, they would have been better off converting because they already had relief from the stay (or the plan injunction) due to their uncured notices of default. But unsecured creditors including the IRS would have been better off with a conversion and a Chapter 7 Trustee administering assets, rather than forcing them to a race to the courthouse. While it was argued that there are no assets remaining in the Chapter 7 estate because they vested in the Debtor upon confirmation, there is also plenty of authority that such assets remain or revert in the estate upon conversion. *See e.g. In re Consolidated Pioneer Mortg. Entities*, 264 F. 3d 803, 807-808 (9th Cir. 2001); *Abbott v. Blackwelder Furniture Co.*, 33 BR 399 (W.D.N.C. 1983); *In re Midway, Inc.*, 166 BR 585, 591 (Bankr. D.N.J. 1994). Debtor will not contest this interpretation of the Code once the case is converted. As such, the estate is available to be administered in Chapter 7. And the estate is not devoid of assets. The house may generate a surplus when sold, and the pending litigation against Monarch has a current claim value of \$320,000 and an estimated settlement value of at least \$160,000.²

4. Accordingly, this case should have been converted rather than dismissed, and the Debtor respectfully requests that the Court enter an Order reconsidering, altering and amending

² If converted before July 25, 2025, avoidance claims will also be property of the Chapter 7 estate, including payments to Newtek in the event the house does not satisfy its claim, leaving it partially or wholly unsecured (which is NOT a legitimate basis for an assertion that conversion is not in the best interests of creditors as a whole).

its order of dismissal, and instead order conversion of this case to a case under Chapter 7.

Dated: July 9, 2025.

Respectfully submitted,

/s/ Daniel M. Press
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CERTIFICATE OF SERVICE

This is to certify that on this 9th day of July, 2025, I caused the foregoing document to be served by CM/ECF upon upon the United States Trustee, the Subchapter V Trustee, and all parties who have requested such notice, and upon all creditors on the attached matrix.

/s/ Daniel M. Press

Label Matrix for local noticing
0422-1
Case 23-11190-KHK
Eastern District of Virginia
Alexandria
Wed Jul 9 17:32:33 EDT 2025

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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(du)Nationstar Mortgage LLC

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(u)Regiane Coelho

End of Label Matrix
 Mailable recipients 67
 Bypassed recipients 5
 Total 72